

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION
ITEM # 12
AGENDA I.D. 12949
RESOLUTION E-4645 (Rev. 1)
June 12, 2014

R E S O L U T I O N

Resolution E-4645: Southern California Edison ("SCE") Company requests that the California Public Utilities Commission approve a bilaterally negotiated Resource Adequacy capacity and energy-only tolling agreement ("DML Contract") between SCE and Dynegy Moss Landing, LLC. The DML Contract would provide SCE with energy, capacity, ancillary services, and all RA benefits for a term beginning on January 1, 2016, and ending on December 31, 2016, via a capacity and energy-only tolling arrangement for Moss Landing Units 6 and 7.

PROPOSED OUTCOME: This resolution approves the Dynegy Moss Landing Contract without modification.

SAFETY CONSIDERATIONS: As existing and operational generating facilities, there are no incremental safety implications associated with this contract beyond status quo.

ESTIMATED COST: Contract costs are confidential at this time.

By Advice Letter ("AL") 2977-E Filed on November 27, 2013 and supplemental AL 2977-E-A filed on April 4, 2014.

SUMMARY

Southern California Edison ("SCE") requests that the California Public Utilities Commission ("Commission" or "CPUC") 1) approve the proposed bilaterally negotiated capacity and energy-only tolling agreement ("DML Contract"), with Dynegy Moss Landing, LLC in its entirety; and 2) include a finding that the DML Contract and SCE's entry into the DML Contract, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the DML Contract; subject only to further review for the

reasonableness of SCE's administration of the DML Contract with respect to least cost dispatch and other applicable standards.

The DML Contract will provide SCE with energy, ancillary services, and Resource Adequacy ("RA") benefits for a term beginning on January 1, 2016, and ending on December 31, 2016, via a tolling arrangement for two existing natural gas-fired generating units for 1,509 megawatts ("MW") of contracted capacity. Each unit is subject to the State Water Resources Control Board ("SWRCB") once-through cooling ("OTC") policy and has a SWRBC OTC compliance deadline of December 31, 2017.

The specific generating units included in the DML Contract and their corresponding capacities are listed below.

Generating Facility	Unit	RA Capacity¹ (MW)	Energy-Only Tolling Capacity² (MW)
Dynergy Moss Landing Energy Facility	Moss Landing Unit 6	Up to 750 MW	754 MW
	Moss Landing Unit 7	Up to 750 MW	755 MW
Total		Up to 1,500 MW	1,509 MW

For the reasons discussed in detail below, the Commission approves AL 2977-E without modification.

BACKGROUND

In May 2012, SCE terminated the following contracts pursuant to early termination provisions in each that had been triggered by the November 2011 bankruptcy of the Dynergy Holdings, an affiliate of Dynergy Morro Bay, LLC and Dynergy Moss Landing, LLC:

¹ The "RA capacity (MW)" column is the amount of capacity from a resource that the Commission has determined can count towards meeting a Resource Adequacy Requirement. It is measured in terms of Net Qualifying Capacity.

² The "Energy Only Tolling Capacity (MW)" column is how much capacity SCE can toll. The tolling agreement will give SCE the rights to the energy producing capability of the unit as well as all of the unit's flexibility to offer ancillary services.

1. A contract with Dynegy Morro Bay, LLC, executed on October 27, 2007, that was for RA and energy-only tolling capacity of 325 MW each, from Dynegy Morro Bay Units 3 and 4, to be delivered between January 1, 2012 and September 30, 2013.
2. A contract with Dynegy Moss Landing, LLC, executed on October 28, 2010, that was for RA capacity of various quantities from Units 1 and 2 of the Moss Landing facility, to be delivered between January 1, 2012 and September 30, 2013.

Dynegy Morro Bay, LLC and Dynegy Moss Landing, LLC (“collectively, “Dynegy”) disputed the validity of the terminations and initiated litigation against SCE, seeking substantial collective damages. In October 2013, SCE and Dynegy reached an agreement to resolve the litigation through the two power purchase agreements – the DML Contract and another transaction, which is described further in the section below. Because of these two transactions, Dynegy has dismissed its litigation against SCE with prejudice. SCE seeks Commission approval of the DML Contract through AL 2977-E. SCE reviewed and updated its evaluation of the DML Contract. This review led to revisions in certain calculations that were provided in the confidential version of Appendix A (Contract and Valuation Information) to Advice 2977-E.

ERRA Transaction

The first transaction (the “ERRA Transaction”) is a contract providing SCE with energy-only tolling capacity for the entire output of Units 6 and 7 for every month of 2014 and 2015, and with RA capacity for one or both units for specific months throughout 2014 and 2015.³ SCE will submit this transaction for a review by April 1, 2014 as a part of the 2013 Energy Resource Recovery Account (“ERRA”) proceeding.

³ DML retains the right to market RA capacity not under contract with SCE.

The RA capacity and energy-only tolling capacity included in the ERRA Transaction are shown in the table below.

2014	Resource Adequacy Capacity (MW)	Energy Only Tolling Capacity (MW)
January	0	1509
February	0	1509
March	0	1509
April	0	1509
May	0	1509
June	0	1509
July	750	1509
August	1500	1509
September	750	1509
October	1500	1509
November	0	1509
December	0	1509

2015	Resource Adequacy Capacity (MW)	Energy Only Tolling Capacity (MW)
January	0	1509
February	0	1509
March	0	1509
April	0	1509
May	0	1509
June	0	1509
July	1500	1509
August	1500	1509
September	1500	1509
October	1500	1509
November	750	1509
December	750	1509

DML Contract

The DML Contract for which SCE seeks Commission approval through this advice letter is a contract providing SCE with energy-only tolling capacity for the entire output of Units 6 and 7 for every month of 2016, and with RA capacity for one or both units for certain months throughout 2016.⁴ The RA capacity and energy-only tolling capacity included in the DML Contract are listed in the table below.

2016	Resource Adequacy Capacity (MW)	Energy Only Tolling Capacity (MW)
January	750	1509
February	0	1509
March	0	1509
April	750	1509
May	1500	1509
June	1500	1509
July	1500	1509
August	1500	1509
September	1500	1509
October	1500	1509
November	1500	1509
December	1500	1509

⁴ DML retains the right to market RA capacity not under contract with SCE.

SCE is only purchasing a portion of the RA available from Units 6 and 7 for months in January and April through December (750 MW or 1500 MW) and 0 MW in February and March.

SCE is, however, purchasing the entire energy-only tolling capacity from both units (1509 MW) for all 12 months in 2016. Tolling agreements typically provide the buyer with the rights to all of the energy producing capability of the unit as well as all of the unit's flexibility to offer ancillary services (e.g., spinning reserves, non-spinning reserves, automatic generation control). In exchange for these rights, the buyer typically pays the seller a monthly capacity payment.

NOTICE

Notice of AL 2977-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

Advice Letter 2977-E was not protested.

DISCUSSION

Decision ("D.") 12-04-046 directed that any OTC power purchase agreement that terminates one year or less prior to the applicable SWRCB compliance deadline must be submitted to the Commission for approval via a Tier 3 advice letter. Moss Landing Units 6 and 7 have a SWRCB OTC compliance deadline of December 31, 2017. The DML contract ends on December 31, 2016, one year prior to the OTC deadline. Therefore, SCE sought approval of the DML contract through a Tier 3 advice letter. We evaluated SCE's AL 2977-E based on criteria established in previous Commission decisions and in California Public Utilities Code, Section 454.5, which provide guidance to the IOUs and the Commission for the procurement of electricity and electricity-related products. Specifically, SCE must demonstrate that the transaction:

1. is in compliance with the Energy Action Plan ("EAP") Loading Order;
2. is in compliance with once-through cooling Procurement Rules;
3. was discussed with the Procurement Review Group ("PRG");
4. is in compliance with SCE's Public Utilities Code Section 454.5 Bundled Procurement Plan;
5. meets residual energy and capacity needs; and

6. is at a reasonable price.

The DML Contract is not inconsistent with the EAP Loading Order.

The EAP Loading Order, published on May 8, 2003, and endorsed in D.04-12-048, contains explicit direction regarding California's preferences for meeting identified resource needs, and directs the Investor Owned Utilities ("IOUs") to prioritize their resource selections accordingly. The EAP prioritizes resources in a "loading order" of policy preference and directs IOUs to procure resources in the following order of priority: Energy Efficiency ("EE") and Demand Response ("DR"), renewable fuel resources, clean fossil-fired Distributed Generation ("DG"), and clean central-station generation.⁵ Moss Landing Units 6 and 7 are existing natural gas-fired steam boiler electric generating facilities.

The DML Contract does not meet all of SCE's bundled customer needs, and therefore has not displaced the opportunity for procurement of additional preferred resources. SCE indicated that it is still pursuing all of its statutory and CPUC decisional requirements regarding preferred resources, including EE, DR, renewable resources, DG, and Combined Heat and Power. Additionally, the DML Contract enables SCE to meet system RA capacity needs, which currently cannot be entirely met with preferred resources. Therefore, the DML Contract is not inconsistent with the EAP Loading Order.

The DML Contract complies with OTC Procurement Rules.

D.12-04-046 directed that any OTC power purchase agreement that terminates one year or less prior to the applicable SWRCB compliance deadline must be submitted to the Commission for approval via a Tier 3 advice letter. The DML contract ends on December 31, 2016, one year prior to the OTC deadline and is therefore subject to this guideline and other procurement rules. D.12-04-046 provided guidance on how the utilities must prepare, and how the Energy Division must evaluate, such power purchase agreements. We address how the DML contract complies with each of the criteria specified in D.12-04-046 below.

⁵ D.04-12-048, page 98.

1) How the contract helps facilitate compliance with the SWRCB's OTC policy or, at a minimum, does not delay compliance.

Moss Landing Units 6 and 7 of the Moss Landing Generating Facility are subject to the SWRCB's OTC policy. The SWRCB OTC compliance deadline for all Moss Landing units is December 31, 2017. The DML Contract ends on December 31, 2016, one year prior to the OTC deadline. According to SCE, the DML Contract facilitates compliance with OTC policy by providing funding for impingement and entrainment studies that are required to be completed prior to the final compliance date. Specifically, "The Transaction will also help facilitate compliance with the OTC policy by providing funding, in part, for the evaluation and testing of alternative measures, including both operational and technological controls that will enable the plant to achieve compliance with the SWRCB OTC policy impingement and entrainment reduction standards by the final compliance deadline."⁶

2) Include the expected operation of the OTC facility under normal load (1 in 2) and high load (1 in 10) conditions, including number of starts and run time after each start.

SCE estimated that the forecasted expected capacity factor over the term of the DML Contract is 3.54% for Unit 6 and 4.05% for Unit 7.⁷ SCE estimated this value using its price-based economic dispatch model. We find the use of an economic dispatch model as a tool to determine operation of the Moss Landing units acceptable for this guideline. We find SCE compliant with the requirement.

3) Include the Local Capacity requirement ("LCR") net position with and without the OTC facility over the contract duration and two years beyond the contract duration.

Moss Landing Units 6 and 7 are not within a designated LCR area. SCE's LCR net position is not affected by these units.

4) How any other available generation resources compare under these criteria.

In October 2013, SCE and Dynegy reached an agreement to resolve the litigation and fill certain SCE forecasted RA and energy position needs through the two transactions described below. Because of these two transactions, Dynegy has dismissed its litigation against SCE. The resolution of litigation could not have been achieved by SCE contracting with any other generation resource.

⁶ AL 2977-E, page 11.

⁷ *Ibid.*

Consistent with D.02-08-071, SCE's Procurement Review Group ("PRG") was notified of the DML Contract.

The Commission established PRGs to oversee the procurement activities of IOUs and mandated that each IOU maintain and routinely consult with its PRG. The purpose of the PRG is to review and assess the details of the IOUs' overall procurement strategy and specific proposed procurement contracts and processes prior to submitting filings to the Commission.⁸ SCE briefed the PRG on September 3, 2013, September 24, 2013, and October 9, 2013, at which time it presented various details about ongoing negotiations of the DML Contract including the pricing, contract terms, and a cost/benefit analysis.

The DML Contract is in compliance with SCE's Public Utilities Code Section 454.5 Bundled Procurement Plan.

A Commission-approved AB 57 Bundled Procurement Plan establishes the limits and criteria that guide utility procurement activities. All transactions and actions that fall within the boundaries of a Commission-approved AB 57 procurement plan are compliant and are assured cost recovery.

In D.12-01-033, the Commission adopted SCE's 2010 Bundled Procurement Plan compliance filing covering the years 2012 through 2022 with modifications. This Decision required SCE to file a conformed version of the 2010 Bundled Procurement Plan through a Tier 3 advice letter, which was approved by Resolution E-4542 on October 11, 2012.

Among other things, SCE's Bundled Procurement Plan specifies position limits (for energy and capacity) and transaction rate limits (referred to as "ratable rates") that apply to electrical capacity transactions for delivery months that occur two or more calendar years beyond the transaction year. Ratable rates are calculated by dividing the maximum transaction volume requirements by the number of months or years available to conduct transactions. The construct of ratable rates prevent SCE from procuring all its forward requirements thereby constraining future procurement.

In Confidential Appendix B of AL 2977-E, SCE provided details on the monthly maximum purchase limits for on-peak and off-peak energy transactions for 2016. We verified these limits against the approved ratable rates for energy and found that the DML Contract does not exceed the approved energy purchase authority.

⁸ D.02-08-071, pages 7 and 8.

SCE also provided details on its capacity position in 2016. We verified these limits against the approved capacity ratable rates and found out that the DML contract does not exceed the approved capacity purchase authority.

The DML Contract does not exceed SCE's approved procurement authority for 2016.

The DML Contract meets residual energy and capacity needs for SCE's bundled customers.

SCE demonstrates its residual need via a set of energy and capacity tables in Appendix B of Advice Letter 2977-E. We evaluated the tables and determined that the DML Contract meets residual system capacity needs for SCE's bundled customers.

The DML Contract is reasonably priced.

SCE employed a Net Present Value ("NPV") analysis to value the DML Contract and presented this information in "Appendix A" of Advice Letter 2977-E. The NPV is the net value of the contract benefits and costs. The contract benefits include energy and ancillary services and RA capacity. The contract costs include contract payments, debt equivalence, and other costs. SCE also netted the value of the existing RA agreements between SCE and DML to the NPV. We evaluated the assumptions used in the analysis and found them reasonable. The quantitative valuation results show that the DML Contract is reasonably priced, and provides cost certainty to SCE's customers for future years.

The DML Contract has the added benefit of resolving a dispute and saving the ratepayer costs in the form of litigation and potential damages.

Dynegy initiated litigation against SCE over the May 2012 terminations. Dynegy alleged that SCE had no right to terminate either contract, claiming SCE was in breach of each as a result, and disputed the value of the termination payment it had received from SCE for each contract. Dynegy sought substantive amounts in collective damages from SCE through the litigation. Because of the two transactions (ERRA Transaction and DML Contract), Dynegy has dismissed its litigation against SCE with prejudice. We have reviewed the terms of the settlement agreement between Dynegy and SCE, and we find that the DML Contract will likely lead to significant savings for SCE's customers versus the potential costs and risks arising from litigation of the terminated contracts.

The DML contract does not violate safety concerns.

The DML Contract includes a number of general provisions that require the seller to comply with certain operational and maintenance obligations in accordance with industry standards and California Independent System Operator (“CAISO”) mandated standards, as well as requirements to comply with accepted electrical practices, applicable laws and permits, and other governmental authorities. Dynegy Moss Landing Power Plant has gone 650 days and 315 days without an employee and contractor Occupation and Health Safety Administration recordable incident, respectively.

Specifically, “The Dynegy ACE (Accountability-Communication-Engagement) Action Plan sets achievable goals based on leading indicators and empowers the Safety Committee to administer the plan. Promoting hazard recognition, gaining feedback through safety surveys, learning new ways to communicate with all employees, encouraging employee wellness and reassessing historical modes of injury are examples of how Moss Landing Power Plant is committed to safety and wellness.

Safety also plays a significant role in decommissioning and demolition for DML as is demonstrated by the successful decommissioning activities at Dynegy’s South Bay plant in Chula Vista.”⁹

Due to the preceding discussion, we are convinced that SCE’s entrance into this tolling agreement complies with all relevant procurement authorities. We expect that SCE will adhere to all requirements regarding least cost dispatch of energy, and shall refrain from exercising market power in the resale of excess local and/or system capacity.

The disclosure of the DML Contract is subject to the Public/Confidential treatment specified in D.06-06-066 and other relevant precedent. The DML Contract begins on January 1, 2016 and the confidential terms of this contract will become public after three years,¹⁰ unless D.06-06-066 is modified to amend the current confidentiality treatment.

⁹ AL 2977-E, page 14.

¹⁰ D.06-06-066, Appendix 1, page 15.

COMMENTS

Public Utilities Code section 311(g) (1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding. The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

We received comments on Draft Resolution E-4645 from SCE on May 8, 2014.

SCE supports the Draft Resolution approving SCE's Advice Letters 2977-E/E-A with a minor correction. The correct value for the 2015 RA capacity provided under the "ERRA Transaction" is zero for the month of June in 2015.

SCE filed Advice Letters 2977-E/E-A to seek approval for the DML Contract. The table error describes the "ERRA Transaction," which was not the subject of Advice Letters 2977-E/E-A and which is not being approved through the Draft Resolution. We have revised the Draft Resolution to reflect this non substantive change.

FINDINGS

1. Decision.12-04-046 directed that any once-through-cooling power purchase agreement that terminates one year or less prior to the applicable State Water Resources Control Board compliance deadline must be submitted to the Commission for approval via a Tier 3 advice letter.
2. On November 27, 2013 Southern California Edison ("SCE") submitted Advice Letter 2977-E seeking Commission approval for a bilaterally negotiated capacity sale and tolling agreement ("DML Contract") between SCE and Dynegy Moss Landing L.L.C. for 1,509 megawatts of contracted capacity for Units 6 and 7 of the Dynegy Moss Landing Energy Facility.
3. On April 4, 2014, SCE submitted Advice Letter 2977-E-A to update SCE's evaluation of the DML Contract.
4. The DML Contract will provide SCE with energy, ancillary services, and resource adequacy benefits for a term beginning on January 1, 2016, and ending on December 31, 2016.
5. Units 6 and 7 the Moss Landing Energy Facility are subject to the State Water Resources Control Board ("SWRCB") once-through cooling ("OTC") policy and have a SWRCB OTC compliance deadline of December 31, 2017.

6. The DML contract ends on December 31, 2016, one year prior to the OTC deadline.
7. The DML Contract meets residual energy and capacity need for SCE's bundled customers.
8. Consistent with Decision 02-08-071, SCE's Procurement Review Group was notified of the DML Contract on September 3, 2013, September 24, 2013, and October 9, 2013.
9. The DML Contract does not exceed SCE's approved Assembly Bill 57 bundled procurement authority for 2016.

THEREFORE IT IS ORDERED THAT:

1. The request of Southern California Edison that the Commission approve the bilaterally-negotiated tolling agreement between Southern California Edison and Dynegy Moss Landing, LLC in its entirety as requested in Advice Letter 2977-E and Advice Letter 2977-E-A is granted.
2. Southern California Edison's entry into the bilaterally-negotiated tolling agreement ("Contract") with Dynegy Moss Landing, LLC is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the Contract, subject only to further review with respect to the reasonableness of Southern California Edison's administration of the Contract with respect to least cost dispatch and any other applicable standards.
3. We expect that Southern California Edison shall adhere to all applicable principles of least cost dispatch and shall refrain from exercising market power in the resale of excess system capacity.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on June 12, 2014. The following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director